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10/720,797	11/24/2003	John A. McMorris III	31234	5426

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EXAMINER

RIVIERE, HEIDI M

ART UNIT	PAPER NUMBER
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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/720,797

Applicant(s)

MCMORRIS ET AL.

Examiner

Heidi Riviere

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/23/2004; 2/7/2005; 9/4/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The Information Disclosure Statements filed **23 August 2004, 7 February 2005 and 4 September 2007** have been considered. Initialed copies of the Form 1449 are enclosed herewith.

Drawings

2. The use of the trademarks "AgcertTM" and "EnvirocertTM" have been noted in this application. These marks should be capitalized wherever they appear and accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 17 and 90** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. **Claims 17 and 90** disclose for example *the template form a part of at least one of an electronic data instrument*. Examiner is uncertain of the metes and bounds of this claim and notes that the scope of the invention herein claimed is unclear. Should "form" actually be "from"? Or should "form" actually be "forms"? As a result of this confusion any potential infringer will also remain unaware of the boundaries of Applicant's invention. Appropriate clarification is requested.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-18 and 20-102** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Daggett et al. (US 2002/0173980 A1)** (hereinafter "**Daggett**") in view of **Sandor et al. (US 2005/0246190 A1)** (hereinafter "**Sandor**").

8. **With respect to claim 1:** Daggett discloses:

- comparing a production practice of the producer to pre-selected qualification criteria; (paragraph 35 – insurance provider compares for example "all corn planted or a specified soil type within a specified county or counties")

- contracting with the producer regarding implementation of the production practice; (Fig. 5; paragraphs 34-35 and 64 – insurance provider insures farmer if certain requirements are met)
- collecting production practice data regarding the producer responsive to the protocol; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)
- warranting the production practice data by the producer; (paragraph 40 – GPS system creation of accurate boundaries is "beneficial to the farmer because it prevents the farmer from over-insuring by paying for more acres than are actually planted, and it prevents the farmer from being under insured in case of crop failure if he actually plants on more acres than he insures)
- confirming the received production practice data meets a pre-selected data standard; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

- taking title to the effective environmental data by other than the producer; (paragraphs 49 and 60 – data verifying carbon credit is verified; credits are sold to individuals or companies)

Daggett does not teach selecting a producer of at least one of environmental emissions and environmental emissions removal; selecting a protocol sufficient for comparing the production practice to a baseline practice; converting the production practice data to environmental data using pre-selected conversion factors; modifying the environmental data to effective environmental data; crediting the producer for at least a portion of the effective environmental data; and registering the effective environmental data for commercial use thereof.

However, Sandor teaches:

- selecting a producer of at least one of environmental emissions and environmental emissions removal; (paragraphs 86-89 – members engaged in electric power products; members can include forest products, chemicals, cement, manufacturing, and municipal sectors)
- selecting a protocol sufficient for comparing the production practice to a baseline practice; (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established

- to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)
- converting the production practice data to environmental data using pre-selected conversion factors; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – "a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents" is applied. "The factor is based on the type of energy activity and the selected activity unit.")
 - modifying the environmental data to effective environmental data; (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)
 - crediting the producer for at least a portion of the effective environmental data; (page 8, paragraph 99 – entities that reduce CO₂ generating activities are credited) and
 - registering the effective environmental data for commercial use thereof. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the production practice and production practice data of Daggett with the data selecting, converting, modifying, crediting and registering of Sandor because of the need for an emissions allowance trading system. (Sandor: paragraph 9)

9. **With respect to claim 2:** Daggett teaches the limitations in the rejections above. Daggett does not teach converting the effective environmental data to an emission reduction unit for a transferring thereof. However, Sandor teaches converting the effective environmental data to an emission reduction unit for a transferring thereof. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with converting effective environmental data to an emission reduction unit for transferring because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11)

1. **With respect to claim 3:** Daggett teaches the limitations in the rejections above. Daggett does not teach the producer is selected from a producer group including at least one of agriculture, forestry, enhanced oil recovery, fuel production, semiconductor manufacturing, metal production, coal production,

deep geologic sequestration, waste management, and waste landfills. However, Sandor teaches the producer is selected from a producer group including at least one of agriculture, forestry, enhanced oil recovery, fuel production, semiconductor manufacturing, metal production, coal production, deep geologic sequestration, waste management, and waste landfills. (page 9, paragraphs 107 and 113 – methane source can be a landfill or agricultural waste)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with a producer group because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

10. **With respect to claim 4:** Daggett teaches the limitations in the rejections above. Daggett does not teach the producer includes a plurality of producers from a plurality of governing jurisdictions. However, Sandor teaches the producer includes a plurality of producers from a plurality of governing jurisdictions. (page 7, paragraph 92 – facilities can be from various countries; page 9, paragraphs 107 and 113 – methane source can be a landfill or agricultural waste; projects noted are from US, North America and Brazil)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with governing jurisdictions because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based

mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

11. **With respect to claim 5:** Daggett teaches a pre-assessing of operations data representative of the producer including at least one of collecting production, size and infrastructure data. (paragraphs 8, 9 and 27 – insurance application requires information on how many acres farmer would like insured)

12. **With respect to claim 6:** Daggett teaches the limitations in the rejections above. Daggett does not teach the protocol includes at least one of guidance on measurement methodologies, indirect measurement criteria, modeling, baseline definitions and measurements, IPCC Global Warming Potential (GWP) conversion factors to enable the equivalent comparison of GHG carbon dioxide equivalents (CO₂e), and individual greenhouse gas performance factors.

However, Sandor teaches the protocol includes at least one of guidance on measurement methodologies, indirect measurement criteria, modeling, baseline definitions and measurements, IPCC Global Warming Potential (GWP) conversion factors to enable the equivalent comparison of GHG carbon dioxide equivalents (CO₂e), and individual greenhouse gas performance factors. (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ...reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with a protocol because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

13. **With respect to claim 7:** Daggett teaches the protocol includes at least one of guidance relating to environmental reductions, a government certified or approved protocol, and determines emission reduction units. (paragraphs 47-48 – USDA's Natural Resource Conservation Service (NRCS) and several environmental engineering firms are developing carbon credit protocols for no-tillage practices, cropland retirement and others)

14. **With respect to claim 8:** Daggett teaches adhering the production practice to the protocol provides a measure of at least one of cleaner air, cleaner water, reduced erosion, electrical power generation, and enhanced land use. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input what crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

15. **With respect to claim 9:** Daggett teaches the protocol selecting includes selecting a plurality of protocols appropriate for the producer operations. (paragraphs 47-48 – USDA's Natural Resource Conservation Service (NRCS) and several environmental engineering firms are developing carbon credit protocols for no-tillage practices, cropland retirement and others)

16. **With respect to claim 10:** Daggett teaches the production practice data collecting includes collecting available external information source data regarding the producer, and wherein the external information source data includes at least one of site physical data, cropping maps, soil maps, watershed maps, topographical maps, geographical reference data, site permit data, regulatory compliance, overhead photography, infrastructure placement, dimensional data, and commercial performance practices. (paragraphs 26 and 32 – components of the invention creates a map that divides a parcel of land, or field, into management zones)

17. **With respect to claim 11:** Daggett teaches the warranting includes at least one of releasing legal liability for the data collecting, releasing biological security liability, and confirming the accuracy of the data collecting with respect to known production practices. (paragraph 40 – GPS system creation of accurate boundaries is "beneficial to the farmer because it prevents the farmer from over-insuring by paying for more acres than are actually planted, and it prevents the farmer from being under insured in case of crop failure if he actually plants on more acres than he insures)

18. **With respect to claim 12:** Daggett teaches the production practice data collecting includes collecting on-site data regarding the producer. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

19. **With respect to claims 13 and 86:** Daggett teaches the on-site data collecting includes at least one of collecting on-site data supplied by the producer, forming an assessment team for the on-site collecting, forming an assessment team for confirming the on-site data collecting, entering the onsite data into a pre-selected template, and electronically transmitting the production practice data to a data center. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

20. **With respect to claims 14 and 87:** Daggett teaches the template provides for input including at least one of questions relevant to the protocol, a commercial standard, environmental compliance, non-conformance, and business needs. (Figure 5 – application includes the request to list "Protocol Used to calculate carbon credit")

21. **With respect to claims 15 and 88:** Daggett teaches the data entering into a template further includes recording at least one of time and geographical reference information. (Figure 5 – application includes section for landowner identifying information as well as latitude and longitude information)

22. **With respect to claims 16 and 89:** Daggett teaches tracking the presence of the assessment team on the site using a GPS for enabling subsequent audit trails and reconstruction of assessment progress. (paragraph 40 – GPS system creation of accurate boundaries is "beneficial to the farmer because it prevents the farmer from over-insuring by paying for more acres than

are actually planted, and it prevents the farmer from being under insured in case of crop failure if he actually plants on more acres than he insures)

23. **With respect to claims 17 and 90:** Daggett teaches the template form a part of at least one of an electronic data instrument, and wherein the electronic data instrument provides for data entry and transmission thereof. (Fig. 5; paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

24. **With respect to claims 18 and 91:** Daggett teaches modifying the template responsive to the onsite data collecting. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

25. **With respect to claims 20 and 64:** Daggett teaches the production practice data collecting includes collecting commercial performance practice data including at least one of production throughput, production capacity, and animal welfare practices. (paragraphs 8, 9 and 27 – insurance application requires information on how many acres farmer would like insured)

26. **With respect to claims 21 and 65:** Daggett teaches the limitations in the rejections above. Daggett does not teach transmitting the production practice

data to a data center; and receiving the production practice data at the data center.

However, Sandor teaches transmitting the production practice data to a data center; and receiving the production practice data at the data center. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance and offset holdings of each participant; participants have Internet access to their accounts)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the data center of Sandor because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

27. **With respect to claims 22 and 66:** Daggett teaches the limitations in the rejections above. Daggett does not teach the production practice data transmitting and receiving further includes at least one of encrypting and decrypting the production practice data, securing the data, and restricting access thereto.

However, Sandor teaches the production practice data transmitting and receiving further includes at least one of encrypting and decrypting the production practice data, securing the data, and restricting access thereto. (page 4, paragraphs 53 and 54 – registry serves as official record of emission

allowance and offset holdings of each participant; participants have Internet access to their accounts; public has read only access)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practice data transmitting and receiving because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

28. **With respect to claim 23:** Daggett teaches the production practice data confirming includes measuring at least one of the integrity and completeness of the production practice data, and testing data eligibility for processing the production data. (paragraphs 32, 34 and 35 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone; the information is provided to insurance carriers to accurately categorize the risk levels)

29. **With respect to claim 24:** Daggett teaches the limitations in the rejections above. Daggett does not teach data eligibility testing includes at least one of testing for non-conforming practices, reviewing contract terms for the producer, reviewing pending environmental actions for the producer, comparing production practices documented through the collection of data to the baseline practice, and 3rd party auditing of the production practice data.

However, Sandor teaches data eligibility testing includes at least one of testing for non-conforming practices, reviewing contract terms for the producer, reviewing pending environmental actions for the producer, comparing production practices documented through the collection of data to the baseline practice, and 3rd party auditing of the production practice data. (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practices via the collection of data to the baseline practice because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

30. **With respect to claims 25 and 67:** Daggett teaches the limitations in the rejections above. Daggett does not teach the production practice data reporting includes at least one of comparing the production practice data to standards of performance and identifying production practice compliance through labeling. However, Sandor teaches the production practice data reporting includes at least one of comparing the production practice data to standards of performance and

identifying production practice compliance through labeling. (col. 5, tables 2 and 3 – various alphanumeric and numeric codes specified)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practice data reporting because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

31. **With respect to claim 26 and 68:** Daggett teaches the labeling includes at least one of identifying a government approval, conferring a regulatory shield, identifying the source of conditions conferring a compliance and identifying a source of environmental removal. (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

32. **With respect to claim 27:** Daggett teaches the limitations in the rejections above. Daggett does not teach the production practice data converting includes the production practice protocol having conversion factors selected from the group including reducing GHG emissions, providing clean water credits, providing clean air credits, providing soil erosion credits, and certifying animal welfare.

However, Sandor teaches the production practice data converting includes the production practice protocol having conversion factors selected from the

group including reducing GHG emissions, providing clean water credits, providing clean air credits, providing soil erosion credits, and certifying animal welfare. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with production practice data converting because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

33. **With respect to claim 28:** Daggett teaches the limitations in the rejections above. Daggett does not teach the GHG reducing includes a parameter selected from parameters including effluent loading, quantity animals, manure containment storage period, manure containment storage practice, number of herd turns (annual animal throughput), flaring volume, flaring efficiencies, gas types and generation rates, and chemical manufacturing efficiencies and emissions.

However, Sandor teaches the GHG reducing includes a parameter selected from parameters including effluent loading, quantity animals, manure containment storage period, manure containment storage practice, number of herd turns (annual animal throughput), flaring volume, flaring efficiencies, gas

types and generation rates, and chemical manufacturing efficiencies and emissions. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with GHG reducing because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

34. **With respect to claims 29, 54, 69 and 92:** Daggett teaches providing guidance to the producer for enhancing the production practice responsive to the production practice data. (paragraph 37 – information collected is used to provide recommendations for types, timing, and rates of application for fertilizers)

35. **With respect to claims 30, 55, 70 and 93:** Daggett teaches the guidance providing includes at least one of systematically balancing product output, emptying manure containment structure more frequently, and practicing a no-till for multiple contiguous years. (paragraphs 45-47 – discussion of the effects of tilling and earning carbon credits through no-till tillage practices)

36. **With respect to claim 31:** Daggett teaches the limitations in the rejections above. Daggett does not teach the environmental data modifying includes accounting for a data variance within +/- a predetermined percentage. However, Sandor teaches the environmental data modifying includes accounting

for a data variance within +/- a predetermined percentage. (Fig. 6; page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline in percentages)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with environmental data modifying because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

37. With respect to claims 32, 56, 71 and 94: Daggett teaches the limitations in the rejections above. Daggett does not teach at least one of allocating a first portion of the effective environmental data to a reserve pool, committing a portion of the reserve pool for mitigating delivery risk, and committing a portion of the reserve pool to mitigate permanence risk. However, Sandor teaches at least one of allocating a first portion of the effective environmental data to a reserve pool, committing a portion of the reserve pool for mitigating delivery risk, and committing a portion of the reserve pool to mitigate permanence risk. (page 4 paragraphs 52-54 – registry stores emission reduction

practices and results; page 4, paragraph 56; page 9, paragraph 111 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with allocating a portion of the environmental data to a reserve pool because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

Furthermore, the data identifying first portion is non-functional descriptive data.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Exemplary "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; see also *Diamond v. Diehr*,

450 U.S. 175, 191,209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the subset. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying first portion adds little, if anything, to the claimed acts or steps and thus do no serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

38. **With respect to claims 33, 57, 72 and 95:** Daggett teaches the portion of the reserve pool includes at least one of an escrow pool and a leveraged

instrument pool for backing a commercial insurance policy. (Figure 5; paragraphs 32 and 34 – insurance application includes section for landowner identifying information as well as latitude and longitude information; farmer or insurance agent working with farmer can use interactive computer to input what crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

39. **With respect to claims 34, 58 and 96:** Daggett teaches providing a payment to the producer for the portion of the environmental data. (paragraphs 46, 48, 49, and 59-61 – carbon credits can be purchased; carbon sequestering is the verification or information that the agreed practice to create the carbon credits is still being followed)

40. **With respect to claim 35:** Daggett teaches aggregating the production practice data from a plurality of producers. (paragraph 41 - farmers involved in the federal MPCP program are already required to report their acreage planted and production harvested)

41. **With respect to claim 36:** Daggett teaches the plurality of producers includes at least one common production practice. (paragraph 47 - “common practices that may create carbon credits in many soils and locations are: minimum and no-till tillage practices, cropland retirement” and others)

42. **With respect to claims 37, 73 and 97:** Daggett teaches the registering includes at least one of verifying a commercial suitability of the effective environmental data, recording the registering, designating ownership of the effective environmental data, (Figure 5; paragraphs 32 and 34 – application

includes section for landowner identifying information as well as latitude and longitude information; farmer or insurance agent working with farmer can use interactive computer to input what crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone). Daggett does not teach assigning a unique identifier thereto, and monitoring a transaction thereof.

However, Sandor teaches assigning a unique identifier thereto, and monitoring a transaction thereof. (col. 5, tables 2 and 3 – various alphanumeric and numeric codes specified).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the information of Daggett with the unique identifier of Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

43. **With respect to claims 38, 74 and 98:** Daggett teaches the unique identifier assigning includes at least one of a protocol related identifier, vintage, geographically referenced coordinates, specific emission reduction accounting, encryption. (Figure 5 – application includes section for landowner identifying information as well as latitude and longitude information).

44. **With respect to claims 39 and 75:** Daggett teaches the limitations in the rejections above. Daggett does not teach the unique identifier is a serial number associated with a transaction. However, Sandor teaches the unique identifier is a

serial number associated with a transaction. (col. 5, tables 2 and 3 – various alphanumeric and numeric codes specified).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the unique identifier of Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

45. **With respect to claims 40 and 76:** Daggett teaches the transaction monitoring includes at least one of monitoring a sale, transfer, exchange, and retirement of the environmental emission data. (paragraph 60 – "[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold").

46. **With respect to claim 41:** Daggett teaches the converting to an emission reduction unit includes at least one of using the unit for an offset, a credit, and an allowance. (paragraphs 49 and 60 – "[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions but find it more cost effective to buy offsets"; "[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold").

47. **With respect to claims 42 and 99:** Daggett teaches the limitations in the rejections above. Daggett does not teach the converting to an emission reduction unit includes choosing a registry jurisdiction. However, Sandor teaches

the converting to an emission reduction unit includes choosing a registry jurisdiction. (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit”; factor can be based on location feature that is related to the geographic location of energy activities).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the converting in Sandor because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor; paragraph 11).

48. **With respect to claim 43:** Daggett teaches the limitations in the rejections above. Daggett does not teach contracting to transfer the title of a plurality of emission reduction units within a time period. However, Sandor teaches contracting to transfer the title of a plurality of emission reduction units within a time period. (page 4, paragraph 56 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the transfer of title in Sandor because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based

mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

49. **With respect to claim 44:** Daggett teaches the limitations in the rejections above. Daggett does not teach at least one of allocating at least a portion of a reserve pool for mitigating transfer risk, assigning title to at least a portion of a reserve pool for mitigating transfer risk, and transferring title for at least a portion to an escrow account. However, Sandor teaches at least one of allocating at least a portion of a reserve pool for mitigating transfer risk, assigning title to at least a portion of a reserve pool for mitigating transfer risk, and transferring title for at least a portion to an escrow account. (paragraphs 12, 53 and 101 – trades are transferred across accounts in the registry; the holdings of the registry can be exchange emission offsets generated by mitigation projects; "compliance through surrender of three different forms of CFIs allows mitigation resources to flow to their highest-impact-per-dollar activity).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with transferring portion of reserve pool to mitigate transfer risk because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

50. **With respect to claim 45:** Daggett teaches selling the emission reduction unit. (paragraphs 49 and 60 – "[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions"; "[t]herefore, as

carbon credits are sold from a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold").

51. **With respect to claims 46, 59, 79 and 100:** Daggett teaches the limitations in the rejections above. Daggett does not teach establishing a pool for a plurality of emission reduction units and accessing the pool during a point of sale event for reducing at least a portion of the environmental emissions resulting from the point of sale event. However, Sandor teaches establishing a pool for a plurality of emission reduction units and accessing the pool during a point of sale event for reducing at least a portion of the environmental emissions resulting from the point of sale event. (page 4 paragraphs 52-54 – registry stores emission reduction practices and results; page 4, paragraph 56; page 9, paragraph 111 - at year-end emission source must transfer allowances or offsets equal to total emissions)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with establishing a pool for emission reduction unit and accessing the pool because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

52. **With respect to claims 47, 60, 80 and 101:** Daggett teaches the limitations in the rejections above. Daggett does not teach the point of sale event is selected from a group including at least one of an airline ticket, fuel at pump, coal for heating or electricity generation, and purchase of automobile. However,

Sandor teaches the point of sale event is selected from a group including at least one of an airline ticket, fuel at pump, coal for heating or electricity generation, and purchase of automobile. (page 4, paragraphs 59 - 60 – emission allowances sold at auction).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with a point of sale event because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

Furthermore, the data identifying types of point of sale events is non-functional descriptive data.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Exemplary "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir.

1983). The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; see also *Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the subset, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the subset.

The Examiner asserts that the data identifying types of point of sale events adds little, if anything, to the claimed acts or steps and thus do not serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

53. **With respect to claims 48, 61 and 81:** Daggett teaches the limitations in the rejections above. Daggett does not teach transferring title of the emission reduction unit for offsetting at least a portion of the environmental emission. However, Sandor teaches transferring title of the emission reduction unit for offsetting at least a portion of the environmental emission. (paragraph 56 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the transferring of title in Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

54. **With respect to claims 49 and 82:** Daggett teaches the limitations in the rejections above. Daggett does not teach the environmental emission results from at least one of an emitter, a plurality of emitters, and a variety of emitters, and wherein the emitter is at least one of a direct emitter and an indirect emitter. However, Sandor teaches the environmental emission results from at least one of an emitter, a plurality of emitters, and a variety of emitters, and wherein the emitter is at least one of a direct emitter and an indirect emitter. (paragraph 84 - multi sector emissions monitoring).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the emitters of

Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

55. **With respect to claims 50 and 83:** Daggett teaches the limitations in the rejections above. Daggett does not teach allocating a plurality of emission reduction units from a plurality of producers of a controlling entity for offsetting environmental emissions of the controlling entity. However, Sandor teaches teach allocating a plurality of emission reduction units from a plurality of producers of a controlling entity for offsetting environmental emissions of the controlling entity. (paragraph 56 - at year-end emission source must transfer allowances or offsets equal to total emissions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the plurality of emission reduction units of Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

56. **With respect to claim 51:** Daggett teaches the limitations in the rejections above. Daggett does not teach environmental emissions removal is selected from a practice group consisting of sequestration, mitigation, and avoidance. However, Sandor teaches environmental emissions removal is selected from a practice group consisting of sequestration, mitigation, and

avoidance. (paragraphs 107-108 – offset project categories include carbon sequestration; mitigation quantities also assessed for individual projects).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with the mitigation and sequestration of Sandor because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11).

57. With respect to claim 52: Daggett teaches:

- comparing a production practice of the producer to pre-selected qualification criteria; (paragraph 35 – insurance provider compares for example "all corn planted on a specified soil type within a specified county or counties")
- collecting production practice data regarding the producer responsive to the protocol; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)
- confirming the received production practice data meets a pre-selected data standard; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to be planted within the management zone; pH levels are

sampled as well as timing and amount of fertilizer applied within each management zone)

- taking title to the environmental data by other than the producer. (paragraphs 49 and 60 – data verifying carbon credit is verified; credits are sold to individuals or companies)

Daggett does not teach, however, Sandor teaches:

- selecting a producer of at least one of environmental emissions and environmental emissions removal; (paragraphs 86-89 – members engaged in electric power products; members can include forest products, chemicals, cement, manufacturing, and municipal sectors)
- selecting a protocol sufficient for comparing the production practice to a baseline practice; (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)
- converting the production practice data to environmental data using pre-selected conversion factors; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – "a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents" is applied. "The factor is based on the type of energy activity and the selected activity unit.")

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the production practice and production practice data of Daggett with the data selecting and converting of Sandor because of the need for an emissions allowance trading system. (Sandor: paragraph 9)

58. **With respect to claims 53 and 63:** Daggett teaches the limitations in the rejections above. Daggett does not teach modifying the environmental data to effective environmental data. (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline).

59. **With respect to claim 62:** Daggett teaches:

- collecting production practice data regarding the production practice responsive to the protocol; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

Daggett does not teach, however Sandor teaches:

- selecting a production practice yielding at least one of environmental emissions and environmental emissions removal; (san: paragraphs 86-89

- members engaged in electric power products; members can include forest products, chemicals, cement, manufacturing, and municipal sectors)
- selecting a protocol sufficient for comparing the production practice to a baseline practice; (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)
- converting the production practice data to environmental data using pre-selected conversion factors; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – "a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents" is applied. "The factor is based on the type of energy activity and the selected activity unit.")
- registering at least a portion of the environmental data for commercial use thereof. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the production practice and production practice data of Daggett with the data selecting, registering and converting of Sandor because of the need for an emissions allowance trading system. (Sandor: paragraph 9)

60. **With respect to claim 77:** Daggett teaches the limitations in the rejections above. Daggett does not teach, however Sandor teaches converting the environmental data to a plurality of emission reduction units and choosing a registry jurisdiction for the registering thereof. (page 7, paragraph 92 – facilities can be from various countries; page 9, paragraphs 107 and 113 – methane source can be a landfill or agricultural waste; projects noted are from US, North America and Brazil; page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett with converting the environmental data to emission reduction units because of the need to have “a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases”. (Sandor: paragraph 11).

61. **With respect to claim 78:** Daggett teaches selling at least a portion of the plurality of emission reduction units. (paragraphs 49 and 60 – “[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions”; “[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold”).

62. **With respect to claim 84:** Daggett teaches:

- collecting production practice data regarding the production practices responsive to the protocol; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)
- confirming the production practice data meets a pre-selected data standard; (paragraphs 32 and 34 – farmer or insurance agent working with farmer can use interactive computer to input was crops are intended to by planted within the management zone; pH levels are sampled as well as timing and amount of fertilizer applied within each management zone)

Daggett does not teach, however Sandor teaches:

- selecting a plurality of producers having production practices yielding at least one of environmental emissions and environmental emissions removal; (paragraphs 86-89 – members engaged in electric power products; members can include forest products, chemicals, cement, manufacturing, and municipal sectors)
- selecting at least one protocol sufficient for comparing each of the production practices to a baseline practice; (page 5, paragraphs 67-68 and 71 – each member of the market is managed by a system with an emission baseline; "[e]missions baseline preferably reflects a detailed assessment of patterns of industrial activity and practical considerations ... reference emission level is preferably established to be able to obtain

emissions data, reflect variations in economic cycles"; adjustments can be made to baseline)

- converting the production practice data to environmental data using pre-selected conversion factors; (page 2, paragraph 21; page 3, paragraphs 28 and 31 – “a factor for converting the activity data to one of the GHG emission or GHG emission reduction equivalents” is applied. “The factor is based on the type of energy activity and the selected activity unit.”)and
- registering the effective environmental data for commercial use thereof. (page 4, paragraphs 53 and 54 – registry serves as official record of emission allowance)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the production practice and production practice data of Daggett with the data selecting, registering and converting of Sandor because of the need for an emissions allowance trading system. (Sandor: paragraph 9)

63. **With respect to claim 102:** Daggett teaches transferring title of the environmental data for offsetting at least a portion of the environmental emissions. (paragraphs 49 and 60 – “[c]ompanies and consumers will buy carbon credits because the need or want to reduce their emissions but find it more cost effective to buy offsets”; “[t]herefore, as carbon credits are sold fro a management zone, an indication is made in the GIS information that [the] management zone has had its carbon credits sold”).

64. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Daggett** in view of **Sandor** as applied to claims 1-18 above, and further in view of **Mahosky et al. (US 2003/0101070 A1)** (hereinafter "**Mahosky**").

65. **With respect to claim 19:** Daggett/Sandor teach the limitations in the rejections above. Daggett/Sandor do not teach, however Mahosky teaches the template modifying includes documenting a non-conforming practice. (paragraphs 87-88 and 91 - user can use form wizard to enter information; form can be customized)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Daggett/Sandor with the documenting of Mahosky because of the need to have "a greenhouse gas emissions trading program that can provide corporations and others an organized, market-based mechanism for cost-effectively reducing global warming gases". (Sandor: paragraph 11)

Furthermore, the data identifying *non-conforming practice* is non-functional descriptive data.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Exemplary "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384-85, 217 USPQ at 403; see also *Diamond v. Diehr*, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate.

The Examiner asserts that the data identifying *non-conforming practice* adds little, if anything, to the claimed acts or steps and thus do no serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any

differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. The subjective interpretation of the data does not patentably distinguish the claimed invention.

CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Name: Heidi Riviere

Signature:



Title: Examiner

Date:

12/28/07



DENNIS RUHL
PRIMARY EXAMINER